IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 56 of 2006
Date of Decision: 17.05.2007

Baldev Singh

.....Petitioner through
Ms. Pooja Chopra,
Advocate

versus

Union of India and others

.....Respondents through
Mr. Ashwinie Kumar
Bansal, Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Vijender Jain, Chief Justice (Oral)

This order of mine shall dispose of arbitration cases No. 56 and 57 of 2006, as both the petitions contain same questions of facts and law.

This petition has been filed by the petitioner, inter-alia, invoking the arbitration clause which is admitted between the parties. Clause 25 of the Arbitration agreement reads as under:-

> " *Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and*

instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question claim, right matter or thing whatsoever in any way arising out of or relating to the contract designs, drawing specifications, estimates, instructions orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Chief Engineer, C.P.W.D. incharge of the work at the time of dispute or if there be no Chief Engineer the administrative head of the said C.P.W.D. at the time of such appointment. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant, that he had to deal with the matters to which the contract relates and that in the course of his duties as Government servant he has expressed views on all or any of the matters in dispute or difference. The arbitration to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Chief Engineer or administrative head as aforesaid at the time of such transfer vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such persons shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Chief Engineer or administrative head of the C.P.W.D. as aforesaid should act as arbitrator and if for any reason, that is not possible, the matter is not to be referred to arbitration at all. In all cases where the total amount of all the claim in dispute is Rs. 75,000/- (Rs. Seventy five thousand) and above,

the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the Arbitration Act, 1940, or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

If the contractor(s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Government, that the bill is ready for payment, the claim of the contractor(s) will be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitrator(s) may from time to time with consent of the parties enlarge the time, for making and publishing the award.

The decision of the Superintending Engineer regarding the question of reduction as well as justification thereof in respect of rates for sub standard work which may be decided to be accepted will be final and would not be open to arbitration."

On the last date of hearing, Mr. Bansal, learned counsel for the respondents had raised a contention that invocation of the arbitration clause was not within the stipulated period and therefore, no alive claim could be adjudicated. However, my attention was drawn by learned counsel appearing for the petitioner to an account statement at page 273 of the paper book showing that payment had been made by the respondent in

March, 1997 on account of escalation station No. II for the work of residential accommodation for ITBP, BFC Bhanu for a sum of Rs. 5,791/-, out of which Rs. 116/- was deducted as income tax and net payable amount was Rs. 5,675/-. Today, another contention raised by learned counsel for the respondents is that as per Clause 25 of the Arbitration agreement, the claim raised by the petitioner is time barred because the same was not raised within 90 days.

In support of this contention, learned counsel for the respondents has relied upon a judgment of Supreme Court in case **National Insurance Co. Ltd. v. Sujir Ganesh Nayak and Co. and another,** AIR 1997 Supreme Court 2049 wherein it was held:-

> *"Clause 19 in terms said that in no case would the insurer be liable for any loss or damage after the expiration of twelve months from the happening of loss or damage unless the claim is subject of any pending action or arbitration. Here the claim was not subject to any action or arbitration proceedings. The clause says that if the claim is not pressed within twelve months from the happening of any loss or damage, the insurance company shall cease to be liable. There is no dispute that no claim was made nor was any arbitration proceeding pending during the said period of twelve months. The clause, therefore, has the effect of extinguishing the right itself and consequently the liability also. Notice the facts of the present case, the insurance company was informed about the strike by the letter of 28.4.1977 and by letter dated 10.5.1977. The insured was informed that under the policy, it had no liability. This was reiterated by letter dated 22.9.1977. Even so more than twelve months after on 25.10.1978 the notice of demand was issued and the suit was filed*

> *on 2.6.1980. It is precisely to avoid such delays and to discourage such belated claims that such insurance policies contain a clause like clause 19. That is for the reason that if the claims are preferred with promptitude, they can be easily verified and settled but if it is the other way round, we do not think it would be possible for the insurer to verify the same since evidence may not be fully and completely available and memories may have faded. The forfeiture Clause 12 also provides that if the claim is made but rejected, an action or suit must be commenced within three months after such rejection; failing which all benefits under the policy would stand forfeited. So, looked at from any point of view, the suit appears to be filed after the right stood extinguished. That is the reason why in Yulcan Insurance Case (AIR 1976 SC 287)(supra), while interpreting a clause couched in similar terms this Court said ; " It has been separately held that such a clause is not hit by Section 28 of the Contract Act." Even if the observations made are in the nature of obiter dicta we think they proceed on a correct reading of the clause."*

On the other hand, learned counsel for the petitioner has contended that this judgment is not applicable as it pertains to an insurance policy and Contract Act whereas limitation provided under the Arbitration Act would be governed by Article 137 of the Limitation Act which gives three years period from the date when the cause of action has arisen, to file a petition for appointment of an Arbitrator. In any event, she has also contended that this Court at this stage will not be going into the merit of the submissions as question of limitation can be decided by the Arbitrator itself. In support of her contention, learned counsel for the petitioner has relied upon a judgment of Supreme Court in case **M/s Groupe Chimique**

Tunisien SA v. M/s Southern Petrochemicals Industries Corpn. Ltd. AIR 2006 Supreme Court 2422 wherein it was held :-

> " *In regard to limitation, the petitioner submitted that having regard to the acknowledgments contained in the series of letters written by respondent requesting for time and the acknowledgments contained in the balance-sheets where these amounts are shown as 'due and outstanding', the petitioner's claim is not barred by limitation. It is, however, unnecessary to examine this aspect as the learned counsel for the respondent fairly conceded that this is a question which can be examined by the Arbitral Tribunal, in the event of a reference to arbitration being made. It is now well settled that the limitation is an issue that can be considered and decided by the Arbitral Tribunal."*

Following the ratio of M/s Groupe Chimique Tunisien, (supra), I am of the view that the claim raised in the present petition by the petitioner is referable to the arbitration and that the question of limitation shall also be determined by the Arbitrator.

With the consent of the parties, I appoint Mr. S.K.Chawla, retired Chief Engineer, C.P.W.D., New Delhi, as sole Arbitrator, to adjudicate upon the dispute between the parties. The Arbitrator shall fix his own fee.

The petition stands disposed of.

Intimation regarding appointment of as an Arbitrator in this petition be sent to Mr. S.K.Chawla, retired Chief Engineer, C.P.W.D., New Delhi, forthwith.

Parties are directed to appear before the Arbitrator on 13.07.2007 at 4.00 P.M.

(VIJENDER JAIN)
CHIEF JUSTICE

17.05 .2007
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